

**CALIFORNIA COASTAL COMMISSION**

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December 20, 2007

**Th25b**

**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO DISTRICT**  
**DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO DISTRICT**  
**ELLEN LIRLEY, COASTAL PROGRAM ANALYST, SAN DIEGO DISTRICT**

**SUBJECT:REVISED FINDINGS FOR CITY OF SAN DIEGO LCP AMENDMENT NO. 2-06B (Creekside Villas) for Commission Meeting of January 9-11, 2008**

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**SYNOPSIS**

**SUMMARY OF COMMISSION ACTION**

On November 15, 2007, the Coastal Commission voted to approve this Local Coastal Program (LCP) amendment request as submitted by the City of San Diego. The City proposed an update of the certified Carmel Valley Neighborhood 8 Precise Plan, that serves as the LCP Land Use Plan (LUP) for this community of the North City LCP segment. The update incorporates past LCP amendments into a newly printed plan, makes several editorial corrections, and adds language to direct future development on a specific, approximately 12-acre property identified as Creekside Villas. The LUP proposal would designate 3.06 acres of a 12.25 acre property for Multi-Family Residential use and the remainder of the site for Open Space. This property is located at the southeast terminus of Carmel Creek Road. The currently-certified LUP designates the entire site as Open Space, and the whole site is within the City's Multiple Habitat Preserve Area (MHPA). The City also proposes to modify its certified implementation Plan (IP) to rezone this specific property, applying the MF-3 zone to the portion of the site designated as Multi-Family Residential and the OS Zone to the area designated as Open Space. Current zoning is also a mix of multi-family and open space zones; however, the locations on the site where the specific zones are applied would be changed and the density increased.

The Coastal Commission determined, through the public hearing process, that the recommended Suggested Modifications to the Carmel Valley Neighborhood 8 Precise Plan and Planned District Ordinance language addressing allowable development area, resource protection and Open Space were unnecessary in this particular instance, because the proposed LUP and IP changes provided benefits far outweighing the impacts of the associated project. Instead, the Commission voted to approve the proposed land use plan and rezoning amendments as submitted by the City. The subsequent findings are modified in several locations, shown in strike-out/underline format, to reflect the Commission's November 15, 2007 action.

**DATE OF COMMISSION ACTION:** November 15, 2007.

**COMMISSIONERS ON PREVAILING SIDE:** Commissioners Blank, Burke, Clark, Firestone, Hueso, Neely, Potter, Secord, Reilly, Shallenberger and Chairman Kruer

City of San Diego LCP Amendment No. 2-06 included four components. Component A (Costa del Mar II) is a residential rezone that received Commission approval at the October hearing. Component C (Condo Conversions), along with a time extension request for the LCPA as a whole, were acted upon by the Commission at the June, 2007 hearing. Component D (Wireless Communications) was certified by the Commission at the April, 2007 hearing. The LCPA as a whole, however, was only filed as complete on April 13, 2007, when the final information regarding Component A was received. The subject Component B was first scheduled for a Commission hearing in July, 2007, but was postponed at that hearing.

**The appropriate resolutions and motions to adopt the revised findings begin on Page 2. The findings for approval of the LCP amendments begin on Page 4.**

**PART II. RESOLUTION FOR REVISED FINDINGS**

The staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to the resolution.

**I. MOTION:** *I move that the Commission adopt the following revised findings in support of the Commission's action on November 15, 2007 concerning certification of City of San Diego LCP Land Use Plan Amendment No. 2-06B (Creekside Villas).*

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the November 15, 2007 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

**Commissioners Eligible to Vote:** Commissioners Blank, Burke, Clark, Firestone, Hueso, Neely, Potter, Secord, Reilly, Shallenberger and Chairman Kruer

**RESOLUTION TO ADOPT REVISED FINDINGS :**

The Commission hereby adopts the findings set forth below for City of San Diego LCP Land Use Plan Amendment No. 2-06B (Creekside Villas) on the grounds that the

findings support the Commission's decision made on November 15, 2007 and accurately reflect the reasons for it.

**II. MOTION:** *I move that the Commission adopt the following revised findings in support of the Commission's action on November 15, 2007 concerning certification of City of San Diego LCP Implementation Plan Amendment No. 2-06B (Creekside Villas).*

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the November 15, 2007 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

**Commissioners Eligible to Vote:** Commissioners Blank, Burke, Clark, Firestone, Hueso, Neely, Potter, Secord, Reilly, Shallenberger and Chairman Kruer

**RESOLUTION TO ADOPT REVISED FINDINGS :**

The Commission hereby adopts the findings set forth below for City of San Diego LCP Implementation Plan Amendment No. 2-06B (Creekside Villas) on the grounds that the findings support the Commission's decision made on November 15, 2007 and accurately reflect the reasons for it.

**PART III. FINDINGS FOR APPROVAL OF CERTIFICATION OF THE LCP LAND USE PLAN AMENDMENT, AS SUBMITTED**

**A. AMENDMENT DESCRIPTION**

The City of San Diego has submitted a Local Coastal Program Amendment (LCPA) that proposes an update of the certified Carmel Valley Neighborhood 8 Precise Plan. This document serves as the LCP Land Use Plan (LUP) for this community of the North City LCP segment. The proposed update makes several editorial corrections, and adds language to direct future development on a specific, approximately 12-acre property identified as Creekside Villas. It also incorporates ~~a the most recent~~ past LCP amendment (No. 2-04C Seabreeze) into the newly printed plan.

The most significant proposed LUP change is to designate 3.06 acres of a 12.25 acre property for Multi-Family Residential use and the remainder of the site for Open Space. This property is located at the southeast terminus of Carmel Creek Road. The residential designation is proposed to apply to the southwestern quarter of the property that is located closest to this road. The currently-certified Neighborhood 8 Precise Plan LCP

Land Use Plan designates the entire site as Open Space, and the whole site is within the City's Multiple Habitat Preserve Area (MHPA). This is an unusual and unique circumstance, where the Commission ~~is asked to~~ approved an LUP amendment to change the LUP designation from open space to residential. The certified City of San Diego LCP allows development of only 25% of properties located entirely within the designated MHPA area, which includes both public and private holdings. For properties partially within the MHPA, all lands outside the MHPA can be developed, but encroachments into the MHPA are only allowed if needed to reach 25% allowable development area on the entire property. This amount of development was allowed as part of the comprehensive planning effort that created the MHPA, wherein at least 75% of all lands so designated would remain open space in perpetuity. The site is located south of, and adjacent to, the Carmel Valley Resource Enhancement Project (CVREP) that includes the Carmel Creek riparian corridor, along with hiking/biking and equestrian trails. CVREP is a mitigation program associated with a 1990 coastal development permit (CDP 6-90-123) that authorized multiple lane additions along Interstate 5, as well as construction of the western segment of State Route 56.

The City has approved a CDP for a subdivision and construction of 89 multi-family condominium units on 25% of the Creekside Villas site. All new residential development is contained within the 25% allowable development area except for Zone Two brush management. The project includes removal of existing structures and revegetation of disturbed areas outside the 25% footprint.

#### **B. CONFORMANCE WITH SECTION 30001.5 OF THE COASTAL ACT**

The Commission finds, pursuant to Section 30512.2b of the Coastal Act, that ~~portions of~~ the Land Use Plan as set forth in the preceding resolutions, ~~are not~~ is in conformance with the policies and requirements of Chapter 3 of the Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act which states:

The legislature further finds and declares that the basic goals of the state for the Coastal Zone are to:

- a) Protect, maintain and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources.
- b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.
- c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights or private property owners.

(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

The Commission therefore finds, for the specific reasons detailed below, that the land use plan ~~does not~~ conforms with Chapter 3 of the Coastal Act or the goals of the state for the coastal zone with regards to concentration of development and protection of sensitive biological resources.

### **C. NONCONFORMITY OF THE LAND USE PLAN AMENDMENT WITH CHAPTER 3**

1. **Land Use/Concentration of Development.** The following Coastal Act policy addresses the appropriate location of new development, and states, in part:

#### **Section 30250**

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels. ...

Although the proposed LUP update includes a few minor and editorial corrections, the amendment request primarily concerns an approximately 12-acre property identified as Creekside Villas. Under the currently certified LUP, the entire property is designated as Open Space and it is all within the Multiple Habitat Planning Area (MHPA). The City processed an LCP amendment in 1998 that reduced densities throughout the precise plan area and designated large areas of the community as Open Space. This amendment identified the Multiple Habitat Planning Area (MHPA) boundaries on the LUP maps, and changed several pockets of residentially-designated land to Open Space. Because the LCP amendment request was to increase the open space lands in the community, and reduce the areas for future development, it was routinely found by the Commission to be consistent with Chapter 3 policies. The City's idea with that amendment was to delete several scattered residentially-designated areas to create a more expansive open space system, keep existing wildlife corridors open, and increase the intensity of development

allowed on remaining properties, or portions of properties, that were in a more disturbed state, including the subject site.

Prior to the 1998 LCP amendment, two areas of the property were designated for residential development; these areas were located in the southwest and northeast corners of the property, with a large area of designated open space separating them. The site is partially disturbed, with a horse ranch operation in the southwest corner and two existing residences and a water tower located in different areas of the property. Due to the separation of the two residentially designated portions of the site, and site topography, development pursuant to that LUP would have required access from two different roads, namely Carmel Creek Road and an existing dirt road referred to as Tang Road, which runs along the northern border of the site adjacent to the CVREP riparian corridor. It would also have allowed development of approximately half an acre more of the site than what is proposed herein. Although the 1998 LCP amendment eliminated both residential designations from the site, no open space rezonings occurred at that time. Therefore, there are portions of the site that are designated Open Space but still zoned for residential uses. Moreover, the Open Space designations in MHPA areas, as explained above, were intended by the City to accommodate the 25% allowable development area laid out in the Land Development Code regulations of the certified LCP. The zoning issues will be addressed further in Parts ~~VI and VII~~ of this report.

Regardless of history, the site is currently designated in the LUP only as Open Space. On private properties designated entirely as open space/MHPA, the certified Land Development Code (LDC), which is the City of San Diego's Implementation Plan, and the City's Multiple Species Conservation Plan (MSCP) guidelines allow up to 25% of the site to be developed, but require siting that development on the least sensitive portion of the property. It is not the intent of these regulations that the 25% be split into multiple areas of a property, because the intent is to maintain the largest contiguous area of open space on each site, and to also have that open space contiguous with open space areas on adjoining lands. ~~Unfortunately, a~~ Although all LUPs approved since the LDC certification identify the MHPA boundaries and general intent, they typically do not address the 25% allowable development area concept in ~~sufficient~~ much detail, if it is mentioned at all.

The proposed amendment would remove the Open Space designation in the LUP from 25% of the site (3.06 acres), and designate that portion for Low-Medium Density Residential development. This LUP designation has a density range of 15-29 dwelling units per acre. The area proposed for the residential designation is the southwest quarter of the site, immediately adjacent to Carmel Creek Road. This is the location of existing horse stables, that will be relocating pursuant to the Clews Horse Ranch LCP amendment approved by the Commission in August. However, the 25% allowable development area will extend beyond the currently disturbed area of the horse stables into adjacent areas containing Southern Maritime Chaparral (SMC). No residential designation is proposed in the northeast part of the site, and no access will be taken from Tang Road, thus

concentrating all future development in the southwest quarter of the property. The 75% of the site to be preserved as open space includes a regionally significant wildlife corridor, that connects CVREP, located north of the site, with the Carmel Mountain open space area, located to the south/southeast of the subject site. Although this portion of the site retains the Open Space designation, all development rights would be extinguished from this remaining open space area, since the other 25% of the site would be designated for residential uses through this LCP amendment. Only open space uses such as passive recreation (use of existing trail) and natural habitat preservation would be allowed.

The City's approval of the subject LCP amendment in September, 2006 was done concurrently with a number of other associated actions, including approval, with conditions, of a CDP for subdivision of the property into three lots and also construction of 89 multi-family condominium units, removal of existing structures, and revegetation of disturbed areas outside the allowable development area of the site. Although 75% of the site is proposed to be designated as open space, the City's CDP allows Zone Two brush management to extend into the open space outside the 25% allowable development area and into SMC. The City allowed Zone Two brush management to extend into open space and SMC because the City does not consider Zone Two an impact. However, in its February, 2007 ~~recent~~ action on the City's Brush Management Regulations, the Commission found that Zone Two brush management is an adverse impact on biological resources, when it occurs in environmentally sensitive habitat area (ESHA). This will be addressed further in the following finding regarding biological resources.

The City CDP itself is not before the Coastal Commission, but provides an example of the type of development accommodated by the proposed LCP changes. As approved by the City, the 89 multi-family units, (that include 10% lower-cost units) and associated facilities, except Zone Two brush management, are all concentrated within the 25% allowable development area of the site, with the remainder set aside as open space. Under the proposed LUP amendment, any potential development on this site would have to be similarly designed, as the new Open Space designation would not allow any development in that area.

Applying the Low-Medium Density Residential LUP designation to the site, a maximum of 89 units could be developed within the 3.06 acre allowable development area that represents 25% of the property. These units would be easily accessible from Carmel Creek Road, where all utilities are currently available. The City determined that the anticipated trip generation of such a development would not alter existing levels of service for the surrounding street system, nor add significantly to the area's overall traffic. Thus, the maximum possible development accommodated by the proposed LUP amendments would not adversely impact the traffic circulation system of the community. In addition, development would be concentrated in the area of existing access and utility connections, eliminating the need to improve access or extend utilities to other areas of the site. Also, the proposed concentration of development preserves the on-site wildlife corridor in its entirety and maximizes on-site open space. The Commission finds that

these benefits, and others discussed in this report do not outweigh the proposal's potential impacts on biological resources, which, when looking at this property in isolation, can  
could only be avoided with application of a smaller development footprint through a  
major redesign and reduction in the scope of the project.

However, through the City's preparation of its MSCP Subarea Plan, this property has not been looked at in isolation. Resources were evaluated on a regional basis, and significant areas of undisturbed habitat, along with connecting lands, were identified for permanent conservation as part of the MHPA, which implements the MSCP. Because of the value of coastal land, the majority of preserve lands are in the less developed parts of the City outside the coastal zone, although a few urban canyon systems in the coastal zone, and the City's estuary and lagoon areas, are included in the preserve as well. Through this regional planning effort, it was determined that an allowable development area of 25% of each property within the MHPA was an appropriate accommodation to land owners to insure preservation of the other 75% of such lands. In some cases, again mostly outside the coastal zone, entire properties have been preserved, with the development that could have been accommodated within 25% of the property transferred to properties in less sensitive locations. On a region-wide basis, this program is likely more effective at preserving significant biological resources and key linkages than addressing each individual property independently, which can often lead to isolated areas of sensitive habitats and disruption of wildlife corridors.

Unfortunately, the City chose not to make the MSCP Subarea Plan a part of its LCP. It has referenced the plan in newer LUP documents, mostly with respect to boundaries on LUP maps, that are typically coincidental with the LUP's open space boundaries. Thus, the Commission has not been able to formally review the MSCP as a whole, although it is generally supportive of regional habitat protection programs. As such, the Commission has no opportunity to ~~and~~ determine if the best interests of the habitat are served by allowing some impacts on individual sites while preserving large contiguous areas of open space elsewhere. The Commission must instead weigh the merits of each individual proposal site by site, without the flexibility a region-wide approach would afford.

In summary, the Commission finds that the LUP changes proposed by the City would accommodate development in the most appropriate area of the subject 12.25-acre site, although not without impact to Southern Maritime Chaparral. To avoid all impacts to Southern Maritime Chaparral, the allowable development area would need to be significantly smaller than the 3.06 acres proposed for a residential designation, thus resulting in far fewer units than the City has approved. However, the proposed LUP changes rely on the certified LDC with respect to allowing 25% of the site to be developed even though it impacts Southern Maritime Chaparral, a Tier I species in the MSCP. Neither current nor proposed LUP language incorporates a policy addressing the 25% allowable development area as a right for properties within the MHPA, nor are the region-wide conservation benefits of the MSCP fully adequately addressed in the LUP. However, a ~~As currently proposed~~ to concentrate development in one section of the site,



the Commission ~~cannot~~ finds the redesignation of land use from Open Space to Multi-Family Residential consistent with Section 30250 of the Act.

**2. Biological Resources.** The following Coastal Act policy addresses the protection and enhancement of biological resources, and states:

**Section 30240**

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Most of the undisturbed portions of the site (7.82 acres) are vegetated with Southern Maritime Chaparral, one of the rarest and most valuable habitats in the coastal zone. There are also 1.19 acres which are covered in non-native grasslands. Grasslands provide foraging area for many species, and are particularly valuable for raptors as hunting fields. Non-native grasslands are considered less valuable than native grasslands, but still perform many of the same biological functions. None of the 1.19 acres of non-native grasslands identified on this site is within, or even near, the allowable development area, so no impacts to this vegetative community will result from the proposed LUP amendments. The remainder of the subject site consists of existing stables, residences, a water tower, various outbuildings, dirt roads/trails, and ornamental landscaping. The proposed 25% allowable development area of the site includes the entire horse stable operation and 1.49 acres of Southern Maritime Chaparral that borders the stable area along its northern and eastern sides.

In addition to being designated Open Space in the currently-certified LUP, the entire site is also included within the City's MHPA. This is the preserve area intended to implement the City's MSCP, which, though not formally part of the certified LCP, is nonetheless referenced in several certified LUPs and in the IP as well. Implementation of the MSCP, a large-scale approach to habitat conservation developed in response to the state's Natural Communities Conservation Program (NCCP) legislation, would allow some development involving incidental take of listed species and/or environmentally sensitive habitat in those areas where it has been deemed to be most appropriate, in order to preserve the largest and most valuable areas of contiguous habitat and their associated populations of listed species. Although the goals of the NCCP processes include maintenance of species viability and potential long-term recovery, impacts to habitat occupied by listed species are still allowed. This approach differs from the more restrictive Coastal Act policies regarding Environmentally Sensitive Habitat Areas

(ESHA), which apply within the Coastal Zone. Those policies provide that, when a habitat must be considered environmentally sensitive (e.g., because it has become especially rare and/or provides crucial habitat for listed species), uses of the habitat should not be allowed except for uses that are dependent on that resource.

As proposed by the City, the amendment request would allow significant impacts on ESHA, which are not consistent with Section 30240 of the Coastal Act. The City's certified LCP does not use the term ESHA, but regulates sensitive biological resources through the Environmentally Sensitive Lands (ESL) regulations and the Biology Guidelines of the certified Land Development Code (LDC). Pursuant to the Coastal Act, the Commission determines what is ESHA both by habitat type and function. The City ranks habitat types according to tiers, with Tier I habitats being the rarest and most valuable for the overall preservation of sensitive plants and animals. Because of the criteria the City uses for identifying Tier I and Tier II habitat, most areas that are identified by the City as Tier I or Tier II habitat constitute ESHA under the Coastal Act, particularly if they are undisturbed, high quality habitat used by listed species and/or contiguous with other ESHA or located within wildlife corridors. In some instances, habitat not identified as Tier I or Tier II can be identified as ESHA if it otherwise meets the above-stated criteria. Southern Maritime Chaparral is identified as a Tier I habitat in the City of San Diego's MSCP, and the Commission's staff ecologist has determined that all Southern Maritime Chaparral on the Creekside property is ESHA.

In addition to the Southern Maritime Chaparral, there is another significant biological resource on the subject property, and that is an existing wildlife corridor. The corridor extends from a large area of open space to the south/southeast of the subject site (Carmel Mountain) diagonally in a northwest direction across the site, and connecting to the CVREP riparian wetlands located north of the site. This is an historic and heavily-used corridor, and is the only wildlife connection between these two open space areas. The corridor runs between the two existing houses on the site, cutting a swath through the disturbed areas of the property north of the horse stables; the stable area itself is proposed for a residential LUP designation. Thus, siting the allowable development area to include these other disturbed areas would interfere with wildlife movement across the site. Moreover, these other disturbed areas are also surrounded by Southern Maritime Chaparral; since these individual areas are even smaller in size than the area proposed for development, and are not adjacent to designated public streets, development in these areas would also adversely impact Southern Maritime Chaparral. Moreover, the wildlife agencies (California Department of Fish and Game and U.S. Fish and Wildlife Service), with concurrence from the Commission's staff ecologist, have determined that preservation of the wildlife corridor is the highest biological priority for this site.

The proposal would place 75% of the site in open space, and that area includes the entire extent of the wildlife corridor on this site; the corridor also extends across portions of other properties in the area. However, under the LCP amendment, the City found that Zone Two brush management would still be allowed within that open space area,

although outside the wildlife corridor, since the City does not identify Zone Two brush management as an impact. In its ~~recent~~ action on the City's Brush Management Regulations in February, 2007, the Commission found that Zone Two brush management is an adverse impact on biological resources, when it occurs in ESHA. The City approved the subject LCP amendment, and concurrent CDP, before the Brush Management action occurred, and the City has not yet accepted the suggested modifications addressing the identification of Zone Two brush management as an adverse biological impact in ESHA. However, the Commission's determination that Zone Two brush management is an impact in ESHA is fully consistent with many other recent Commission decisions addressing this matter.

On this particular site, there is more than one acre of SMC, which has been determined to be ESHA, within the 25% allowable development area of the property. Looking at this site independently, this is clearly inconsistent with Section 30240 of the Coastal Act, which is the legal standard of review for the proposed LUP amendments. The currently-certified Carmel Valley LUP does not look at biological resources from a region-wide perspective, as occurs in the MSCP Subarea Plan, but only on a neighborhood basis.

In summary, the proposed LCP amendment proposes the allowable development and required open space areas in the most appropriate locations on the property. Also, even though the wildlife corridor includes some disturbed areas, it is, by the definition given previously, ESHA in and of itself; moreover, it has been determined to be the highest priority for preservation on this site. However, nothing in the LUP, either as currently certified or as proposed, states that a property owner is entitled to develop 25% of a site, regardless of resource impacts. Impacts to ESHA from non-resource dependent uses cannot be found consistent with Section 30240 of the Coastal Act. Impacts to ESHA from non-resource dependent uses are thus only allowed to avoid a take of private property or through a balancing analysis. Therefore, the Commission finds that the LCP amendment, as proposed, is not consistent with Chapter 3 of the Coastal Act, and ; ~~moreover, even if the LUP is modified to incorporate MSCP provisions, the resulting LUP can only be certified by invoking the balancing provisions in Sections 30007.5 and 30200 of the Coastal Act.~~

## **PART V. FINDINGS FOR APPROVAL OF THE LAND USE PLAN AMENDMENT, IF MODIFIED**

### **A. SUMMARY FINDING/CONFORMANCE WITH SECTION 30001.5 OF THE COASTAL ACT**

~~Although the proposed LUP amendment is not consistent with all applicable Chapter 3 policies, the Commission finds a revised LCP amendment consistent with the Coastal Act, based on the inclusion of several suggested modifications. For the most part, the modifications address MHPA issues, incorporating policies regarding the concept of the~~

~~25% allowable development area into the LUP, and assuring preservation of the undeveloped 75% of MHPA properties; these suggested modifications will be further discussed below. One suggested modification, however, addresses the Coastal Zone section of the Implementation Element of the LUP. That section contains a summary of past and future City and Commission actions on the LUP, but it is completely out of date as currently certified. The suggested modification simply updates the section to reflect current conditions.~~

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**B. SPECIFIC FINDINGS FOR APPROVAL**

~~**1. Land Use/Concentration of Development.** As discussed in prior findings, the main portion of the proposed amendment concentrates development in the most appropriate location on the Creekside Villas site, adjacent to a public road, with both existing and expected development on other nearby properties. However, the LUP itself does not adequately address this issue, either as currently certified or as proposed by the City. All or part of the first eight suggested modifications concern the issues of land use and/or the concentration of development. Although each modification is inserted in a different part of the LUP, they are all intended to incorporate the 25% allowable development area concept into the LUP, and guarantee preservation of the remaining 75% of MHPA properties. In that regard, the suggested modifications limit uses in the 75% of each site to those allowed in the City's OC 1-1 Zone (i.e., passive recreation, natural resource preservation, associated signage, and, under limited circumstances, for example, when not located in ESHA, satellite antennas and interpretive centers), and require recorded conservation easements or deed restrictions to preserve the areas in perpetuity.~~

~~Incorporation of the 25% allowable development area provisions will make the certified LUP more fully consistent with past Coastal Commission actions on sites both within this and other communities of the City's LCP. The MSCP and MHPA are already referenced in many certified planning documents, particularly those updated since 1998, but the details of how development is to occur under those programs have not been fully described in any of the City's LUPs. This is primarily because the MSCP itself is not part of the certified LCP, although its provisions significantly influence development throughout the City, including within the coastal zone. Moreover, the environmentally sensitive lands regulations of the LDC, as certified by the Commission in 1999, were designed to implement the MSCP. The proposed suggested modifications attempt to address this absence of LUP specificity by incorporating additional policies describing development of MHPA lands in the remaining undeveloped parcels in Neighborhood 8 of the Carmel Valley community. With the suggested modifications, the Commission finds the LUP consistent with the cited Chapter 3 sections of the Coastal Act.~~

~~It is unfortunate that the City has chosen not to submit its MSCP for Commission review and certification. By not providing the Commission this tool to allow flexibility in~~

addressing the resources on individual sites through application of a regionwide perspective, the Commission is forced to review each project or LCP amendment on a site-by-site basis. This has resulted, and will continue to result, in the need for suggested modifications, as deficient LUPs are proposed for amendment. This approach increases the complexity of each individual LCP amendment that comes before the Commission, and likely causes unnecessary delays for individual property owners who are caught between both agencies' sometimes conflicting standards of review. The Commission has reviewed and approved a similar habitat management program for the City of Carlsbad, as well as for several other communities further north along the coast. In general, the Commission supports the concept of regionwide resource preservation. Although there may be some specific concerns with the City's MSCP, the Commission looks forward to an opportunity to review the City's program, as it believes this will ultimately simplify the review and approval process for both LCP amendments and permits.

**2. Biological Resources.** The property that is the primary focus of the proposed LCP amendment, Creekside Villas, includes significant biological resources, both in the form of large areas of SMC and by the presence of a critical wildlife corridor. As with the previous finding, all or part of the first eight suggested modifications also concern the issue of biological resources. Again, although each modification is inserted in a different part of the LUP, they are all intended to incorporate the 25% allowable development area concept into the LUP, and guarantee preservation of the remaining 75% of MHPA properties. In that regard, the suggested modifications limit uses in the 75% of each site to those allowed in the City's OC 1-1 Zone (i.e., passive recreation, natural resource preservation, associated signage, and, under limited circumstances, for example, when not located in ESHA, satellite antennas and interpretive centers, and require recorded conservation easements or deed restrictions to preserve the areas in perpetuity.

However, Suggested Modifications #2 and #3 are particularly applicable to biological concerns. Suggested modification #2 addresses brush management, and serves to clarify the Commission's intent that no brush management, whether Zone One or Zone Two, may occur in ESHA. The Commission made this position clear in its recent action (February, 2007) on the City's brush management regulations, when it determined that Zone Two thinning activities create an adverse impact on habitat values, and, thus, for new subdivisions, Zone Two brush management must not be permitted in ESHA. Zone One clearance activities were already prohibited in sensitive or natural areas of a site, but the City had maintained that Zone Two activities were not an impact. The suggested modification allows Zone Two to extend beyond the identified development area of a site as long as there are no encroachments into ESHA. However, for properties within the MHPA, further restrictions apply, and Zone Two brush management, as well as Zone One, must be fully contained within the allowable development area of properties located in the MHPA. This equates to 25% of a property wholly within the MHPA. For properties partially within the MHPA, all lands outside the MHPA can be developed, but encroachments into the MHPA are only allowed if needed to reach 25% allowable development area on the entire property.

~~Suggested Modification #3 addresses sites within the MHPA where prior activities have disturbed more of the site than is allowed for development pursuant to the OR Zones in the certified LDC. It identifies these areas as suitable for restoration and authorizes their future use for mitigation credits as needed for approved developments. This is consistent with the last paragraph of Part C on Page 25 of the LUP's Open Space Element, which states (with emphasis added):~~

~~In addition, the natural open space areas would include the existing undisturbed habitat areas on the remaining undeveloped properties that are designated open space and MHPA. The City shall ensure the preservation of portions of public and private property that are partially or wholly designated as open space and /or MHPA to the maximum extent feasible. Development potential on open space lands shall be limited to preserve the park, recreation, scenic, habitat and/or open space values of these lands, and to protect public health and safety. Maximum developable area and encroachment limitations shall be established to concentrate development in existing developed areas. Disturbed lands beyond the allowable developable area can be restored to functional habitat value as part of the MHPA. Rezoning to implement the appropriate encroachment limitations and development standards shall occur prior to development of these properties.~~

~~With the inclusion of the suggested modifications, the Commission finds the LCP amendment more consistent with the previously cited Coastal Act policy addressing ESHA than as it was proposed by the City of San Diego. However, since the LCP amendment will still result in impacts to ESHA, it can only be found fully consistent with Chapter 3 of the Coastal Act by invoking the balancing provisions of Section 30007.5 of the Coastal Act, as provided below:~~

### **3. CONFLICT RESOLUTION: ESHA AND CONCENTRATION OF DEVELOPMENT**

#### **a. The Balancing Approach to Conflict Resolution**

As is indicated above, the standard of review for the Commission's decision whether to certify a land use plan amendment is whether the plan, as amended, continues to meet the requirements of, and be in conformity with, "the policies of Chapter 3" (meaning California Public Resources Code ("PRC") sections 30200-30265.5). PRC § 30512(c). In general, a proposal must be consistent with all relevant policies in order to be approved. Thus, if a proposal is inconsistent with one or more policies, it must normally be denied (or conditioned to make it consistent with all relevant policies).

However, the Legislature also recognized that conflicts can occur among those policies. PRC §§ 30200(b) and 30007.5. It therefore declared that, when the Commission identifies a conflict among the policies in Chapter 3, such conflicts are to be resolved "in

a manner which on balance is the most protective of significant coastal resources.” That approach is generally referred to as the “balancing approach to conflict resolution.” Balancing allows the Commission to approve proposals that conflict with one or more Chapter 3 policies, based on a conflict among the Chapter 3 policies as applied to the proposal before the Commission. Thus, the first step in invoking the balancing approach is to identify a conflict among the Chapter 3 policies.

**b. Conflicts Between Coastal Act Policies in this Matter**

In order for the Commission to utilize the conflict resolution provision of Section 30007.5, the Commission must first establish that the proposal presents a substantial conflict between two statutory directives contained in Chapter 3 of the Coastal Act. The fact that a proposal is consistent with one policy of Chapter 3 and inconsistent with another policy does not necessarily indicate a conflict. Rather, the Commission must find that to deny the proposal based on the inconsistency with one policy will result in coastal zone effects that are inconsistent with another policy.

The policy conflicts that arise in this particular LCP amendment request flow from the fact that the proposed LCP amendment is inconsistent with Coastal Act policies that protect environmentally sensitive habitat areas (ESHA) as identified above. However, denial in this case could also result in coastal zone effects that are inconsistent with Sections 30240 and 30250 because it would leave the existing LCP in place, and under that LCP, particularly the existing zoning that applies residential zoning to two different portions of the property, the developer could (1) undertake a diffuse pattern of development that would not cluster development near existing developed areas, (2) develop in areas that constitute ESHA, (3) encroach upon, or constrict, an existing wildlife corridor, and (4) develop in areas that are not ESHA themselves but that are sufficiently close to ESHA that the development would disrupt the connectivity between existing ESHA areas, thus significantly degrading those ESHAs. In addition, continued use of existing residences on the property that are located in the wildlife corridor would cause continued degradation of this ESHA.

As described above, the proposed LCP amendment is inconsistent with the ESHA protection policies in Section 30240 because it would allow for the construction of residential development in areas that qualify as ESHA. This development would significantly disrupt the habitat values of the ESHA and would not constitute uses dependent on the resource. Thus, the proposed changes to the open space boundaries on the LUP maps are inconsistent with Section 30240 of the Coastal Act.

However, to deny the LCP amendment based on its inconsistencies with this Chapter 3 policy would result in adverse impacts that, in some areas, would be even more inconsistent with these policies, as it would allow development in ESHA and maintain existing residential uses within the wildlife corridor, which is the highest priority biological area on the property. Currently, the certified LUP designates the entire

property as Open Space, but underlying zoning identifies two portions of the site for residential development. As explained above, this is an Open Space designation unique to San Diego, where this particular Open Space designation contemplates allowing a 25% development right. The new Open Space designation on the site would eliminate that potential, as the 25% of the site allowed to be developed will be specifically designated for residential development, and the remaining open space must be retained as true open space, with no development. A past court action also gave the property owner the right to improve Tang Road, the dirt path that crosses the northern part of the site. Such road improvements would be required to access the northern portion of the site that is currently zoned for multi-family residential use and where the two existing residences are located. The road improvements and potential residential development in that area would not only impact ESHA, but would also block the wildlife corridor. The Commission's denial of this LCP Amendment would therefore, at a minimum, allow the continuation of existing residential uses on the site that currently disrupts the wildlife corridor.

Although current zoning would allow fewer total multi-family units (77 as compared to the 89 available under the proposed zoning), they would be spread over a wider area of the property and result in more impacts to ESHA. As stated previously, a portion of these units, and their required access road, would not only impact ESHA, but would obstruct the wildlife corridor as well.

Thus, the existing certified LCP, particularly the IP component, could be interpreted to allow approval of development that would have impacts that are more damaging than those associated with the current proposal, when considering the northern area currently zoned for residential development and the impacts to ESHA necessary to access and develop that area. More importantly, there are currently two residences located in the middle of the wildlife corridor ESHA, and these uses would continue if the LCP Amendment were denied. In its current form, because of these two non-contiguous areas designated Open Space (with a 25% development right), but zoned for residential development, the current LCP does not ensure that development will occur in a manner that will protect the wildlife corridor, which is considered to be the most significant biological resource on the property. Thus, although the proposed LCP amendment would allow more resource impacts than the current LCP in some ways by allowing encroachment from residential development to impact slightly more Southern Maritime Chaparral (ESHA) in the southwestern part of the site than current zoning would allow, it is also true that denial of the amendment would forfeit the opportunity afforded by the proposal to improve the open space boundary in some areas and to remove the development potential in the northeast portion of the site that would have impacted some Southern Maritime Chaparral and an area of non-native grasslands, as well as obstructing the wildlife corridor. The proposal will also result in future removal of several existing structures (two residences and a water tank, at a minimum) that exist in the area proposed for open space, and make those disturbed areas available for restoration. This will ensure at least some degree of increased ESHA protection, as the wildlife corridor itself is an ESHA, as Section 30240 demands.



In addition, as stated, the existing LCP provides for residential development in two separate areas of the subject site. This dispersed development pattern is inconsistent with Section 30250 in several respects. First, and most directly, it fails to concentrate development, and would, in fact, require two separate access roads to serve a relatively small (12.25 acres) property. In addition, development would not be limited to the areas with the least sensitive resources. Finally, split residential development of this nature has the effect of degrading even more ESHA than it directly displaces, as it fragments the remaining habitat, including the wildlife corridor, which significantly degrades its functionality. In sum, the LCP could be interpreted to permit development in non-contiguous areas that would have more severe negative impacts than the current proposal. Thus, a simple denial would forfeit the ability to implement the mandates of Section 30250 by reducing the City's ability to consolidate development contiguous with existing development and away from most of the sensitive resources.

In sum, existing residences located within the identified wildlife corridor impact the functionality of that corridor. In addition, it is reasonable to assume that some development, under the auspices of the existing, certified LCP, may move forward and negatively affect these sensitive habitat areas, especially the wildlife corridor. This type of development would be inconsistent with Section 30240 and 30250 of the Coastal Act as it would have a negative impact on sensitive habitat and lead to a configuration that does not concentrate development adjacent to existing developed areas. Thus, although the City's proposed LCP amendment would adversely impact ESHA, the denial of the LCP amendment would likely result in more significant adverse impacts to ESHA and would not concentrate development, as required by Section 30250.

However, this is not the end of the conflict analysis. An application does not present a conflict among Chapter 3 policies if there are feasible alternatives that would achieve the proposal's essential goals without violating any Chapter 3 policy. Thus, an alternatives analysis is a critical condition precedent to conflict identification, and thus, to invocation of the balancing approach. Here, however, given the 25% development allowed on site, as discussed above, there is no viable alternative that would satisfy all Chapter 3 policies. As a result, there is a true conflict, and the Commission must proceed to resolve the conflict in a manner that is, on balance "the most protective of significant coastal resources." PRC § 30007.5.

### **c. Protection of Significant Coastal Resources at this Site**

Although there is no viable alternative that would satisfy all Chapter 3 policies, as even existing development at the site impacts ESHA, the City's proposal significantly reduces the negative impacts associated with the current LCP. With application of the open space boundaries on the LUP maps as proposed by the City, the wildlife corridor and majority of existing biological resources on the site would be protected. Only 25% of the site would be designated for residential development, whereas development under current

zoning would impact a slightly greater area (3.06 acres under the subject proposal, and 3.51 acres under existing zoning). All existing ESHA on the subject site would be incorporated into open space, except the 1.49 acres of Southern Maritime Chaparral occurring within the 25% allowable development area sanctioned in the certified LCP.

Moreover, the Commission notes that the Legislature specifically declared, in Section 30007.5, that the principle of concentration of development in close proximity to developed urban area may be more protective, overall, than preserving each specific wildlife habitat. This is certainly the case on the subject property, where the proposed location of the allowable development area is immediately adjacent to existing development on an adjoining property, and the existing wildlife corridor will be preserved as open space.

The Commission notes that the certified LUP and IP both require mitigation for unavoidable impacts to sensitive habitats outside the 25% allowable development area, which would be applied to any future development proposal that allowed an ESHA impact. The certified LUP and IP do not typically allow any impacts beyond the 25%, although minor exceptions are allowed for the siting of public utilities, etc. Any impacts found to be unavoidable under these circumstances will be analyzed and mitigated through review of future permit applications.

To date, the City does not always interpret its certified LUPs, or the LDC, consistent with the Commission's understanding of these documents at the time of their certification. Some examples of differences in interpretation address brush management and MHPA zoning. When the Commission approved the LDC in 1999, it accepted the City's "impact neutral" stance on Zone Two brush management. Although it became apparent to the Commission, its staff ecologist, and wildlife agency representatives, through on-the-ground experience, that Zone Two brush management was an impact when it occurred in ESHA, the City continues to rely on the "impact neutral" determination in the certified LDC.

In 2004, the Commission attempted to correct this situation in its certification of the Seabreeze LCP and approval of the associated, appealed CDP. The following new language was added to the Carmel Valley Neighborhood 8 Precise Plan (Page 7) at that time:

"Brush Management Zone 2 activities are not permitted within environmentally sensitive areas. Zone 2 areas (maximum 65 feet in width and refers to the area of native or naturalized plant material that is thinned to reduce fuel load) may extend beyond the developable area when subject to an approved site specific brush management plan acceptable to the fire department and when it avoids significant disruption of habitat values, is the minimum necessary to meet fuel load reduction requirements and complies with the brush management provisions of the City's Multiple Species Conservation Program (MSCP)."

The Commission intended the first sentence of this passage to guarantee protection of all ESHA outside the allowable development area, and the remainder of the passage would only apply to situations where ESHA was not involved. The City has interpreted the first sentence as stating the ideal situation, but believes the remainder of the passage provides a means to make exceptions to that LUP policy that would allow ESHA impacts. This interpretation is how the City was able to approve the Creekside proposal that allows Zone Two brush management in Southern Maritime Chaparral. ~~The suggested modifications replace that language with language that makes it clear that the Commission's intent is that there be no impacts to ESHA from brush management activities. If the proposed LUP amendment is not approved as modified herein, the existing language will remain in the LUP and misinterpretations will continue to occur, resulting in adverse impacts on ESHA.~~

Another difference in interpretation involves the following LUP language (Page 25 of the LUP):

Disturbed lands beyond the allowable development area can be restored to functional habitat value as part of the MHPA. Rezoning to implement the appropriate encroachment limitations and development standards shall occur prior to development of these properties.

The Commission would suggest that this language means disturbed areas on an MHPA property outside the allowable development area provide an opportunity for restoration that could be used for mitigation for other projects. However, the City appears to take the position that all disturbed property on a site can be developed, even if it results in greater than 25% of the site being developed. The Commission's experiences with the Carlsbad LCP have brought to light the lack of available lands for mitigation within the coastal zone; in the past, the City has had difficulty finding mitigation sites, especially for specific habitat types. The Commission finds that lands already designated in the MHPA, even if disturbed, represent the best location for mitigation, rather than purchasing property outside the coastal zone to add to the MHPA, as has been the City's practice. ~~Another suggested modification clarifies the Commission's position in this regard. Again, if the proposed LUP amendment is not approved as modified herein, the existing language will remain in the LUP, and prime opportunities for restoration activities within the coastal Zone may be lost.~~

Since the entire Creekside site is currently designated Open Space in the certified LUP, the proposed LCPA will allow area currently protected within the City's MHPA to be removed from the Open Space/MHPA designation. However, the revised Open Space/MHPA boundary will protect a portion of the site currently zoned for residential development by rezoning it to open space, and will thus expand the acreage forming a continuous habitat corridor that is currently heavily used by wildlife. This will better

maintain the continuity of open space and is the unique aspect of this LCP amendment, as submitted.

In addition to the significant biological impacts of developing the northeastern portion of the site as allowed under current zoning, that portion of the site is adjacent to CVREP, and could result in significant view issues from the public trails located only a short distance beyond the northern property boundary. Views in this scenic area are a public resource to be protected. Development of the southwestern portion of the site will not impact views from these, or other, public vantage points since already existing development would form a backdrop to this part of the Creekside property, such that public views of significant community features do not now exist. Therefore, the Commission finds that approval of the proposed LUP, ~~as modified~~, is on balance the most protective option for all relevant coastal resources.

Given all of the above factors, the Commission finds it is, on balance, most protective of the significant coastal resources within Carmel Valley Neighborhood 8 to approve the LUP amendment ~~as modified~~. This will promote the basic development pattern proposed by the City to concentrate allowable development adjacent to existing urban services and other developed areas, as is required by Section 30250, and it will permanently protect many areas of ESHA on the site, including the wildlife corridor, as is required by Section 30240.

The LUP amendment provides for the preservation of habitat with high natural resource value, and to generally locate development away from these areas. This will ensure that the critical wildlife movement corridor remains designated as Open Space to maintain sufficient areas of high-quality habitat for species survival. The clustering and concentration of development away from the wildlife corridor and most other sensitive areas that will result from the proposed standards will provide a larger, more contiguous preserve area than if development on the subject property were to occur pursuant to existing zoning. The allowed development of 25% of MHPA properties was part of the larger MSCP approach and was determined to be a reasonable development allowance in light of sensitive and highly constricted parcels and site-by-site development impacts. The Commission therefore finds that approval of the LUP amendment, ~~as modified~~, would result in increased clustering of development, expansion of permanently protected areas, and minimization of urban sprawl into some sensitive habitat areas and Open Space/MHPA lands on the subject site.

Although not entirely consistent with every Coastal Act policy, the LUP amendment would produce cumulative benefits that would be more consistent with the policies in Chapter 3 of the Coastal Act than development under the LCP as currently certified. The benefits would, on balance, be more protective of significant coastal resources, such as the existing wildlife corridor, than allowing development in two opposite corners of the property. This finding that approval of the LUP, ~~as modified~~, is the most protective

option for coastal resources is based on the understanding that the Open Space Zone requirements applied to the open space areas of the site will be strictly applied.

In summary, the City has proposed revisions to the LUP policies, and LUP maps, which establish a hardline boundary between allowable development area and open space. The associated City CDP requires that all development, along with Zone One brush management, be located entirely within the 25% allowable development area. However, the permit would allow Zone Two thinning and pruning activities within the 75% Open Space portion of the site, which would result in some impacts to ESHA. Regardless, the Commission concurs that the proposed boundary is appropriately situated on the site. In addition, the Commission finds the proposed LUP amendment will preserve the entirety of the wildlife corridor present on this site, and the associated project will provide approximately 9 units of affordable housing. The Commission finds the preservation of the wildlife corridor to be the highest biological priority for the site, and further finds that said preservation, restoration of the currently disturbed areas of the site outside the allowable development area (as required by the City CDP), and the provision of affordable housing fully offset the small Zone Two brush management impacts associated with the City's approved CDP. Whether or not this particular development is built, it represents the maximum density that can be allowed on-site, based on the associated rezoning. The Commission's November 15<sup>th</sup> action has set the boundary between developable area and open space, such that any project coming forward for this site in the future would have to be consistent with the LCP as amended herein. Therefore, the Commission finds that, with the above-stated understandings, the LUP amendment, as modified, is consistent with applicable Coastal Act policies, and that, on balance, it represents the option most protective of significant coastal resources.

## **PART V. FINDINGS FOR APPROVAL OF THE CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

### **A. AMENDMENT DESCRIPTION**

The proposed LCPA includes an Implementation Plan (IP) amendment to rezone the subject 12.25-acre site to be consistent with the land use designations addressed previously. The Carmel Valley Community, a subarea of the North City LCP segment, is regulated by a Planned District Ordinance (PDO). The PDO contains its own set of zones, rather than employing the zones available through the certified LDC that apply in the majority of the City. The IP amendment proposes to assign the MF3 Zone to the residentially-designated areas of the property, and the OS Zone to the open space areas.

### **B. SUMMARY FINDINGS FOR APPROVAL REJECTION**

The primary concerns in a rezone are that the zones be consistent with the certified LUP. It has been determined in previous findings that the proposed boundary between open

space and allowable development area is proposed in the appropriate location on the site. The proposed boundary incorporates the allowed 25% development included in the certified IP, and, ~~with the suggested modifications,~~ minimizes ESHA impacts to the degree possible. The proposed zone boundary location is consistent with the proposed LUP boundary. ~~However, the OS Zone of the PDO is very generic and is applied to all types of open space in the Carmel Valley community, including the CVREP riparian corridor, natural open space, and developed open space on private properties, including a golf course. It does not identify allowed uses in the different categories of open space, or require that 75% of properties within the MHPA be preserved in perpetuity. The zone was created long before MSCP planning began, and has not been modified to distinguish between these different types of open space. In addition, the PDO maps are grossly outdated and, especially with respect to Neighborhood 8, do not reflect current, or proposed, circumstances.~~

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP, including the LUP amendments proposed herein.

The Carmel Valley Neighborhood 8 Precise Plan includes policies that are applicable to the proposed rezones, including the following:

On Page 3 (within Planning Background), the bottom paragraph (referring to a 1999 LCP Amendment) states:

This amendment recognized the importance of the Carmel Valley open space to implementing the Citywide MSCP by including the CVREP corridor (including the Carmel Creek floodway), steep hillsides, wildlife corridors, and sensitive habitats of Neighborhood 8 within the Multi-Habitat Planning Area (MHPA) preserve.

On Page 7 (within Key Development Factors), the revised top paragraph states:

Brush Management Zone Two activities are not permitted within environmentally sensitive habitat area (ESHA). As defined in Section 142.0412 of the Land Development Code (Brush Management), ESHA includes southern foredunes, torrey pines forest, coastal bluff scrub, maritime succulent scrub, maritime chaparral, native grasslands, oak woodlands, coastal sage scrub and coastal sage scrub/communities, and any vegetative communities that support threatened or endangered species. Except for properties wholly or partially within the MHPA, Zone Two brush management may extend beyond the development area only where there is no potential for encroachment into ESHA. For properties wholly within the MHPA, Zone Two brush management shall not extend beyond the 25% developable area of the property. For properties partially within the MHPA, Zone Two brush management shall not extend beyond the allowable development area.

On Page 13 (within Land Use Element), the bottom paragraph states:

Development is expected to occur only within areas of low conservation value where site disturbance has already occurred and access is already provided. Three major roads bisect Neighborhood 8: El Camino Real, Carmel Creek Road, and Carmel Country Road. The segments of El Camino Real and Carmel Country Road within Neighborhood 8 cross environmentally sensitive areas not suitable for development, as well as the Palacio Del Mar golf course. The portion of Carmel Creek Road south of Shaw Ridge Road fronts properties where either agricultural or urban development has already occurred, including the private school, a commercial equestrian facility, and the Pinnacle Carmel Creek apartment complex. This area is the appropriate location to concentrate development and assure preservation of the maximum amount of remaining undeveloped open space and/or Multiple Habitat Planning Area (MHPA) lands to provide habitat linkage and connectivity between the riparian corridor of Carmel Creek and the coastal sage hillsides of Carmel Valley within Neighborhood 8. Carmel Creek Road also provides convenient access between Neighborhood 8, the SR-56 freeway, and other Carmel Valley neighborhoods to the north. Properties fronting Carmel Creek Road may accommodate some development, while areas within Neighborhood 8 with limited access should be conserved as open space or developed with limited recreational use where appropriate.

On Page 14, a new policy added herein states:

For properties wholly within the MHPA, the allowable development area shall not exceed 25% of the entire property, and shall be sited in the least sensitive part of the property. The remaining 75% of the property shall be preserved as natural open space in perpetuity pursuant to the criteria in the OC 1-1 Zone of the Land Development Code, and shall be limited to the uses allowed in that zone (i.e., passive recreation, natural resources preservation, and associated signage by right, and interpretive centers and satellite antennas with local discretionary review and approval). For properties partially within the MHPA, the percentage of allowable development area will vary based on the amount of each property outside the MHPA, with encroachments into the MHPA limited to the amount that would result in 25% of the site being developed. All remaining portions of the property shall be preserved as natural open space in perpetuity pursuant to the criteria in the OC 1-1 Zone of the Land Development Code, and shall be limited to the uses allowed in that zone). The open space restrictions shall be recorded against the property through recordation of a conservation easement or deed restriction.

On Page 25 (within Open Space Element), the ~~revised~~ last paragraph of Part C states:

In addition, the natural open space areas would include the existing undisturbed habitat areas on the remaining undeveloped properties that are designated open space and MHPA. The City shall ensure the preservation of portions of public and private property that are partially or wholly designated as open space and /or MHPA to the maximum extent feasible. Development potential on open space lands shall be limited to preserve the park, recreation, scenic, habitat and/or open space values of these lands, and to protect public health and safety. ~~The existing wildlife corridor that runs southeast to northwest between the Carmel Mountain Preserve and CVREP shall be preserved and enhanced as part of any development on adjacent properties.~~ Maximum developable area and encroachment limitations shall be established to concentrate development in existing developed areas. Disturbed lands beyond the allowable development area can be restored to functional habitat value as part of the MHPA. Rezoning to implement the appropriate encroachment limitations and development standards shall occur prior to development of these properties.

On Pages 39 and 40 (within Circulation Element), the bottom paragraph on Page 39 and top paragraph on Page 40 state, in part:

Carmel Creek and Carmel Country Roads will provide the primary internal access to Neighborhood 8. In addition, Shaw Ridge Road is improved as a 2-lane collector street to provide access west of Carmel Creek Road. Shaw Ridge Road is not fully improved east of Carmel Creek Road, although it is used for driveway access to a nearby residence and to provide parking for trail users.

A collector street was initially required to link Carmel Creek and Carmel Country Roads. However, more recent changes in the development patterns within the community do not require a street connection between Carmel Creek Road and Carmel Country Road. The only property still requiring access from this street is a future passive public park; all other properties suitable for development would take access from Shaw Ridge, Carmel Creek or Carmel Country Roads. ...

On Page 50 (within Design Element), the second bullet states:

- Maintain the sense of an open visual corridor that is presently enjoyed along SR-56 and the CVREP trails.

On Page 50 (within Design Element), the sixth bullet states:

- Preserve or enhance sensitive environmental features such as riparian areas, sandstone bluffs, and significant vegetation groupings.



On Page 50 (within Design Element), the last two paragraphs state:

As indicated in the environmental constraints map (Figure 3), several visually significant hillsides occur on the valley's north-facing slopes. These hillsides provide the valley with a significant visual element. These hillsides will be maintained in their natural state pursuant to the sensitive slope criteria as written in this Precise Plan (Chapter VIII).

To preserve views to these hillsides from public vantage points, such as SR-56 and the CVREP multi-use trails, permitted structures shall not exceed 35 feet in height. Where no public vantage views of the natural hillsides and sandstone bluffs would be adversely affected, higher buildings may be allowed.

On Page 53 (within Design Element), the last paragraph states:

All grading, if possible, will be accomplished in phases, avoiding ground clearing prior to construction. This will minimize the need for detention basins; however, detention basins will be allowed as part of Best management Practices (BMPs) to maintain water quality as needed. Grading will be carefully monitored, avoiding any disturbance of areas designated as undisturbed natural Open Space. On sites designated entirely as open space, required detention basins shall be contained within the allowable developable area.

### **MF3 Zone**

a) Purpose and Intent of the Ordinance. The multi-family zones are intended primarily for the development of cluster and multiple residential structures at densities of five to forty-four dwelling units per net acre (dua).

b) Major Provisions of the Ordinance. The multi-family zones of the Carmel Valley PDO incorporate the use provisions of the RM-1-1 Zone (previously the R-3000 Zone). However, the PDO includes specific regulations for the following development criteria that are different from, and take precedence over, those found in the RM-1-1 Zone:

- Density varies per zone, but 15-29 dua for MF3
- Minimum Lot Areas and Dimensions
- Yard (setback) Requirements
- Maximum Building Heights of 50 feet
- Lot Coverages
- Floor Area Ratios, and
- Landscaping

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. The MF3 Zone is one of five zones available to denote multi-family development areas within the Carmel Valley Community. It allows multi-family development at densities ranging from 15 to 29 du/a. The project area must be a minimum of 6,000 sq.ft., and 450 sq.ft. of usable open space must be provided per unit. Buildings can be no higher than 50 feet, or four stories, whichever is less. This restriction would apply generally to all the neighborhoods of the Carmel Valley Community; however, the subject Neighborhood 8 LUP has a height restriction of 35 feet, with an exception allowed for developments that do not impact views of the community's natural hillsides and sandstone bluffs from public vantage points.

The proposed IP amendment to rezone a portion of the 12.25-acre site to the multi-family residential MF3 Zone is consistent with all the cited LUP policies. The proposed zone could accommodate a maximum of 89 units on the subject site (3.06 acres of residential area times 29 du/a.); this density would not require any street or intersection improvements, as it would not add enough daily trips to change the levels of service on streets within Neighborhood 8 or surrounding areas.

Any future development on the property would be concentrated in the southwest corner of the property, which is already partially disturbed with an existing horse stable operation. Such future development would take access from Carmel Creek Road only. The siting of future development, and rezoning of all other portions of the property to open space, would preserve an on-site wildlife corridor that crosses the property diagonally from southeast to northwest. Since the existing residentially-zoned area in the northeast corner of the site would be rezoned to open space, there would be no need for access to the existing, ~~more northerly~~ homes, which, along with other existing structures, would be removed from the proposed open space in conjunction with any development proposal. Thus, the unimproved portion of Shaw Ridge Road (known locally as Tang Road, named for the prior owner of the Creekside property) referenced in the cited policies could remain unimproved at this time, although it is expected to still require minimal improvements in the future, when the passive park site adjacent to the east of Creekside is developed by the City.

Because of surrounding development, it is possible to design buildings greater than 35 feet in height on the subject site that are consistent with the public view concerns identified above. From SR-56 and the CVREP trails, the existing Pinnacle Carmel Creek apartment complex would form a backdrop to future structures on the Creekside property. Thus, any building design that did not exceed the height of those buildings, from those public vantage points, would be consistent with the cited LUP policy.

Rezoning the proposed 3.06-acre portion of the site to multi-family residential will create an allowable development area comprising 25% of the site. The most disturbed portions of the site are within this identified allowable development area, but undisturbed vegetation that has been determined to be ESHA will also be within the allowable

development area. However, the certified LDC allows impacts to ESHA in order to achieve the permitted 25% development of the site. This issue has been addressed and resolved in previous findings. Therefore, the Commission finds the proposed MF3 Zone appropriate for the allowable development area portion of the subject site, and consistent with, and adequate to carry out, the LUP policies cited above.

### **OS Zone**

#### **a) Purpose and Intent of the Ordinance/Major Provisions.**

The Carmel Valley PDO includes only one Open Space Zone. There is no stated purpose or intent, nor any major provisions. As currently certified, the zone states in its entirety:

Open space preservation is required. Approval of the final map shall be conditioned upon preservation of the open space through a mechanism acceptable to the City, limiting the future use of the open space and preserving it as an open space.

#### **b) Adequacy of the Ordinance to Implement the Certified LUP Segments.**

The Carmel Valley PDO is a very old planning document, dating to 1979, with no greater specificity added to the open space language since 1990 at the latest. Thus, the PDO open space regulations are not as detailed as newer ordinances. The LUP identifies three kinds of open space, the CVREP riparian corridor; other natural areas, such as the on-site wildlife corridor and other biological resources; and developed open space, such as the golf course east of Carmel Country Road and recreational areas within subdivisions. From the language of the OS Zone, cited above, it would appear that the zone is intended to primarily address preservation of open space through subdivision maps.

Most of the undisturbed areas of the subject site are comprised of Southern Maritime Chaparral, which the Commission's staff ecologist has determined to be ESHA. Typically all areas of ESHA on any site would be put into open space and zoned accordingly. However, for properties all, or partially, within the MHPA, a maximum 25% of each property may be developed under the certified LDC. These regulations reflect the provisions of the City's MSCP subarea plan, which addresses habitat preservation on a regionwide basis, rather than property by property. It requires preservation in perpetuity of 75% of all properties within the MHPA, and results overall in a greater amount of protected open space than property by property review would afford. Although the Commission has not reviewed or certified the MSCP for the City of San Diego, it has reviewed such programs for other communities, and found this approach to habitat protection consistent with the Coastal Act.

Because of the distribution of Southern Maritime Chaparral on this property, it is not possible to carve out 25% of the subject site without impacting ESHA. Moreover, it has

been determined by the wildlife agencies, and concurred with by the staff ecologist, that preservation of the existing wildlife corridor takes precedence over preservation of other areas on the property. For this reason, not all the ESHA on the site is included in the area proposed to be zoned open space. However, the entire wildlife corridor, which connects large preserved areas to the south with the CVREP riparian corridor, and ultimately the Los Penasquitos Lagoon and ocean, is included within the proposed open space zone. The proposed open space area is contiguous with undeveloped lands owned by the City of San Diego to the east, where future passive park improvements may occur, and with the undisturbed portion of the site to the west, which is currently undergoing review for redevelopment at the local level. The portion of the site identified as the allowable development area (MF3 Zone) is contiguous with the disturbed portions of the property to the west.

The proposed Open Space Zone is intended to preserve the wildlife corridor, two small areas of non-native grasslands that occur in the northern part of the site well away from the allowable development area, and the majority of the SMC. Because of the provision in the LDC allowing development of up to 25% of MHPA lands, ~~an allowance now reflected in the LUP as well through suggested modifications~~, the loss of SMC within the allowable development area has been addressed through the balancing provisions of the Coastal Act. However, the proposed Open Space Zone does not include a list of allowed uses, nor does it identify the requirement to preserve 75% of each property as passive open space. Since the zone addresses all community open space, including public and private locations, with both active and passive recreation areas, there ~~was is a~~ concern over what types of open space uses could be allowed in the 75% preserved areas of MHPA properties in the PDO.

If this site was not within the PDO, where open space zoning options are minimal (one zone only), the City could have zoned the entire site OR (Open Space - Residential), which is the zone category in the certified LDC that, based on the Commission's understanding at the time the LDC was certified, was intended to address sites wholly, or mostly, within the MHPA. That zone includes the provision to allow development of a maximum of 25% of such sites, but development would occur at a significantly lower density than would be allowed by the MF3 Zone. The OR Zone allows residential development at a density of one unit per ten acres, or, if clustered, one unit per four acres. In the case of the subject 12.25-acre site, that would have allowed one unit under the regular option or three units if clustered. The City, however, is trying to increase the stock of housing in the City, especially affordable housing, and wanted a higher density applied to the subject site. Current City regulations require that ten percent of any proposed larger residential development be affordable to lower income persons. These regulations would not appear to apply to the significantly reduced density that would occur if the site were developed pursuant to the OR Zone.

Another option available outside the PDO would be application of the OC-1-1 Zone (Open Space – Conservation) to the portion of the site designated Open Space. This is

the zone most often used by the City for areas to be preserved in their natural state, and is the most restrictive open space zone available in the LDC. Very limited uses are allowed in the OC-1-1 Zone, including only passive recreation, natural resources preservation, and associated signage by right, with limited placement of satellite antennas allowed, and interpretive centers only with a Conditional Use Permit. Since the subject property is located within a PDO, use of this zone is not possible.

However, due to the extremely high biological resource values on the subject property, the Commission would expect the open space on the subject property to be managed as areas zoned OC-1-1 are managed. ~~It is not possible to guarantee this management with the current wording of the OS Zone. Therefore, the Commission finds the proposed OS Zone inconsistent with the cited LUP policies, and inadequate to carry out their intent, and must be denied as submitted.~~ Although the OS Zone itself cannot guarantee this level of management, the MHPA regulations provide such a guarantee. MHPA open space is limited to preservation of native vegetation, protection of wildlife, limited agriculture, and some passive recreational uses, such as trails.

A separate PDO concern is that the included neighborhood maps, the map of Neighborhood 8 being one of them, are very outdated, and do not reflect current zoning on many sites. There have been a number of rezonings throughout the years, but the PDO maps have not been adjusted accordingly. The Neighborhood 8 map does not reflect any of the prior amendments addressed in the background portions of this report, and it is likely that the maps for other neighborhoods are similarly out of date. In addition, some text has been added to the PDO over the years without Commission review and certification; one known example is a paragraph addressing maintenance districts for community Open Space areas in the Open Space Zone. The Commission strongly urges the City to bring forward a PDO update to reflect all current provisions, and include up-to-date maps for all neighborhoods in the coastal zone.

In summary, the Commission finds the City has selected appropriate zones for the intended use of this site. Multi-family zoning is compatible with the large apartment complex south of the site, the commercial and educational uses west of Carmel Creek Road, the expected future multi-family use of the adjacent property to the west, and the future public park adjacent to the east. The Open Space Zone will adequately protect the wildlife corridor, as well as adjacent areas of native habitat and disturbed areas to be restored. Therefore, the Commission finds that the rezoning is consistent with the certified LUP, and is adequate to carry out its intent.

**PART VII. FINDINGS FOR APPROVAL OF THE CITY OF SAN DIEGO  
IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED**

~~The Commission finds it can approve the proposed rezonings only with suggested modifications addressing the identified deficiencies. Most significant is expanding the~~

~~OS Zone text to include a list of allowed uses within the 75% preserved areas of MHPA properties. Suggested Modification #9 adds the specific parameters of the OC 1-1 Zone of the certified LDC. Under that zone, only very limited uses are allowed, including passive recreation, natural resources preservation, and associated signage by right, and interpretive centers and satellite antennas with local discretionary review and approval. With these added parameters, the Commission finds the proposed Open Space Zone is appropriate for the site, and that it will be consistent with, and adequate to carry out, the policies of the certified LUP.~~

~~The suggested modification also includes a paragraph addressing establishment of a maintenance district for community open space areas. This paragraph is already part of the PDO as displayed on the City's web site, but was not included in the most recently certified version of the PDO. Since it raises no Coastal Act inconsistencies, it has been added herein to better update the PDO. However, it raises a concern that there may have been other modifications to the PDO that were never brought forward to the Commission for certification; this concern is supported by a brief perusal of the PDO on the City's web site. Therefore, the City might consider a future LCP amendment to bring this PDO up to date.~~

~~Along this same line, Suggested Modification #10 requires submittal of an updated PDO map for Neighborhood 8. A number of changes have occurred in the community's zoning that did not require any modification to the PDO text itself. However, these have occurred without modification of the PDO map. The suggested modification also allows the City to update other maps in the PDO if they are similarly outdated. Thus, the maps can all be updated through this action, although a future LCP amendment would be required to incorporate text changes that may have occurred throughout the PDO.~~

#### **PART VIII. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen

any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13542(a), 13540(f), and 13555(b).

In this particular case, ~~with the inclusion of several suggested modifications~~, the environmental impacts have been reduced to the greatest extent feasible, but significant effects to Southern Maritime Chaparral will nonetheless occur. As explained in the findings above, the LCP Amendment, ~~with suggested modifications~~, is the option that is on balance the most protective of significant coastal resources. The overriding considerations identified in the conflict resolution portion of the findings, including protection and restoration of ESHA on other portions of the site, concentration of development and provision of multi-family residences, including affordable housing, warrants certification of the LCPA as amended. Therefore, the Commission finds the subject LCP, as amended, conforms with CEQA provisions.

CITY OF SAN DIEGO • DEVELOPMENT SERVICES		PROPOSED REZONING	
M/L IN SEQ OF SEQ SEC 19-14-3W		CASE NO. 5769	
ORDINANCE NO. _____	REQUEST MF3,MF1,OS	 DEVELOPMENT SERVICES MANAGER	
EFF. DATE ORD. _____	PLANNING COMM. RECOMMENDATION		
ZONING SUBJ. TO _____	CITY COUNCIL ACTION		
BEFORE DATE _____			
EFF. DATE ZONING _____			
MAP NAME AND NO. _____		<b>B- 4219</b> APN: 307-023-33 (280-1698) 2-2-05	
		EXHIBIT NO. <u>1</u> APPLICATION NO. <b>SD LCPA 2-06B</b> Rezoning Map	